P24170.A09

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :Viswanathan SRINIVASAN et al. **Confirmation No. 4047**
Group Art Unit: 1615

Appl. No. :10/736,902

Examiner: Sheikh, Humera N.

Filed :December 17, 2003

For :DOSAGE FORM CONTAINING PROMETHAZINE AND ANOTHER DRUG

ELECTION WITH TRAVERSE

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Amendment
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

This is in response to the requirement for restriction under 35 U.S.C. § 121 mailed from the U.S. Patent and Trademark Office on April 11, 2007. Inasmuch as the one-month shortened statutory period for reply is set in the Office Action to expire on May 11, 2007, this response is being filed by the initial due date for response. However, if any extension of time is necessary, this is an express request for any necessary extension of time and authorization to charge any required extension of time fee or any other fees which may be required to preserve the pendency of the present application to Deposit Account No. 19-0089.

RESTRICTION REQUIREMENT

The Examiner has required restriction under 35 U.S.C. 121 and 372 to one of the following inventions:

I. Claims 1-59 and 68-74, drawn to a pharmaceutical dosage form, classified in class 424, subclass 400.

II. Claims 60, 61-65, drawn to a method of concurrently alleviating a condition, classified in class 424, subclass 472.

III. Claims 60, 66 & 67, drawn to a method of concurrently alleviating a condition, classified in class 424, subclass 464.

ELECTION

In order to be responsive to the requirement for restriction, Applicants elect, with traverse, the invention set forth in Group I, **claims 1-59, and 68-74**. Further, Applicants elect, with traverse, the species of the **Bilayered tablet** as the dosage form. Currently, at least claims 1-24, 27-50, and 68-74 read on the elected species.

TRAVERSE

Applicants respectfully submit that a restriction requirement is inappropriate in this case. Even if one were to assume, *arguendo*, that the inventions of Groups I to III are distinct, the requirement for restriction should be withdrawn because there is no serious burden.

In MPEP Chapter 800, the Office sets forth its policy by which examiners are guided in requiring restriction under 35 U.S.C. § 121. Section 803 states that "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."

Applicants note that the inventions of all the three groups identified in the Restriction Requirement relate to a dosage form combining promethazine and at least one other drug.

Accordingly, as a practical matter, the searches for inventions I to III should significantly overlap, if not be substantially coextensive. For example, a search for the invention of Group I should cover many (if not almost all) of the areas that are also relevant for the inventions of Groups II and III. Thus, the search burden would not be serious.

For the above reasons alone, the Restriction Requirement should be withdrawn, which action is respectfully requested.

The Examiner is reminded of the rejoinder practice set forth in MPEP § 821.04, i.e., if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend or otherwise include all of the limitations of the allowable product claim will be rejoined.

Should there be any questions, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
Viswanathan SRINIVASAN et al.

Stephen M. Roylance
Reg. No. 31,296

Stephen M. Roylance
Reg. No. 31,296

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GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191